Home (1947) Department

Ms. SERIES.

G.O. NO. Ms. 4189

Dated 15th November 1947.

P.10/B

[Despatch Abstract.]

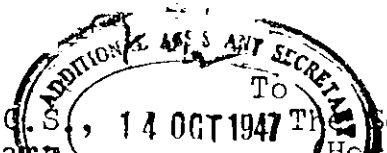
Criminal appeal - Appeal against acquittal - Bellary district - Sessions Judge, Bellary - C.A.No.32 of 1947 - Application - Sanction

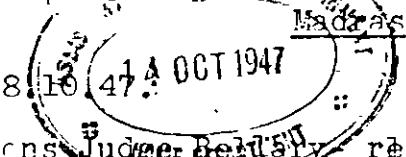
From

N.Anantaraman, Esq., I.C.S.,
Dist.Magistrate, Bellary.

To

The Secretary to Government,
(Home Department) Fort St.George,
Madras.





No.C.1957/47-Mag.I.dated 8.10.47.

Sir,

Revision - C.A.32/47 on the file of Sessions Judge, Bellary relating to C.C.49/47 on the file of A.F.C.M.Bellary moving the High Court for revising the orders of the Sessions Judge, Bellary-requested

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In C.C.No.49/47 on the file of Addl.First Class Magistrate Bellary the Tahsildar Bellary filed a charge-sheet against the accused Nagappa and 3 others of Kappagal and Basalingana Gowd and Doddana Gowd of Kudithini with transporting 10 bags of Korra without a permit from one village to another- an offence punishable under Sec.7 read with Sec.8 of Essential Supplies(Temporary Powers) Act 1946. After trial the Addl.First Class Magistrate found all the accused guilty and sentenced A.1 to A.4 to pay a fine of Rs.50/- each in default to undergo Rigorious Imprisonment for a month and A.5 to pay a fine of Rs.100/- in default to undergo Rigorious Imprisonment for a month. Basalingana Gowd, the fifth accused preferred an appeal to the Sessions Judge, Bellary against the orders of the Addl-First Class Magistrate, Bellary. The Sessions Judge, Bellary allowed the appeal and set aside the sentence of the lower court on the ground that neither the order that the accused is alleged to have violated nor its publication has been proved.

2. The Public Prosecutor Bellary who was consulted in the matter is of opinion that under the Essential Supplies (Temporary Powers) Act of 1946 the previsions of Rule 119 of the D.C.I.Rules are omitted and that all rulings under the D.O.I.Act do not apply so far as the new Act is concerned in view of the omission from the Act, the provisions of Rule 119. He further adds that oral evidence has been adduced to the effect that the notification which was contravened has been duly published and that the court can take judicial notice of such publication. He is of opinion that this is a fit case for moving the High Court in revision. I entirely agree with his views.

p.t.o.

3. I request that the Government may be pleased to move the High Court in revision to revise the orders of the Sessions Judge Bellary passed in C.A.No.32/47 on the file of his court.

4. Two copies of the judgments of the Lower Court and the appellate court and the opinion of the Public Prosecutor are enclosed.

P3 unfair

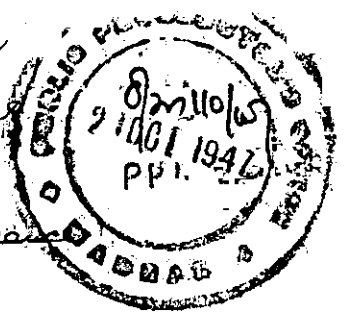
Yrs. Anantapur 8.x.47

nsn.Murthi/8.10.47. Dist. Magistrate.

Home department

Endorsement No. 71502 F/47-1 dated 20 xii

Referred to the Public Prosecutor, Madras for remarks on the proposal of the District Magistrate, Bellary. The reply to this reference should be sent not later than 5-11-47



V. Karunakaran 20/10
Secretary to Government
Ld Jm 17/10/47
20.10.47

To the Public Prosecutor, Madras.
(with C.F. and judgment copies at @ the relevant with reply) A.D. 6-11-47

Copy of G.P.No. 221 dated 25-9-1947 from the Public Prosecutor, Bellary to the Dist. Magistrate, Bellary.

Subt- Criminal Justice - C.A's - Rx 23, 24, 33 and 34 of 47 on the file of the Sessions court Bellary.

I have gone through the appellate judgments, the connected records and the opinion of Mr. Raghunatha Rao, A.P.P.No.I.

I agree with the remarks of A.P.P.No.I In fact I contended before the learned sessions Judge met under the Essential supplies (Temporary powers) Act of 1946, the provisions of rule 119 of the Defence of India Act are omitted. All the rulings are under the D.C.I Act and do not apply so far as the new Act is concerned in view of the omission from the Act the provision of rule 119. Oral evidence in every case has been adduced that the notification complained against has been duly published and the court can take judicial notice of the said publication. But the learned Sessions Judge holds that the said notification ought to have been filed in evidence and I think he is not right in saying so.

In addition to these 4 cases, the Sessions Judge has taken the same view in many other cases that came up before him subsequently and has allowed the appeals. I feel that the matters have to be taken to the High court in revision as they involve an important question of interpretation of law.

All the records are herewith sent back and their receipt may kindly be acknowledged.

M.A.Basith,
Public Prosecutor,
25-9-47.

True copy.

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21/10

Please put it on 27/10
J

Home dept.

Memo. No. 71502-F/47-2 d 20-10-47
Criminal revision petition - Bellary dt
C.A. No. 32 of 1947 on the file of the S.J., Bellary

PP 1-2 S.F. Ref:- From the D.M., Bellary No. C. 1957/47 Mag
2 d 8-10-47.

PP 4 - 6 (J) -- The copies of the judgment, in C.A. No. 32 of 194
on the file of the Sessions Judge, Bellary,
enclosed with the letter cited do not show
the date on which the judgment was
delivered. The D.M., Bellary is requested
to forward, not later than 1-11-47, two
certified copies of the judgment and
calendar in the above case.

17/10/47 20.10.47 20/10/47

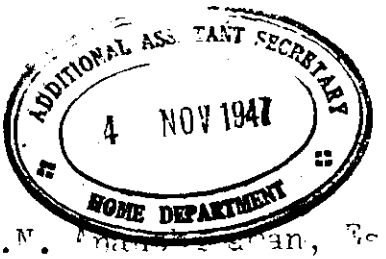
To
The D.M., Bellary
R.D. 2-4-47

Note:- The draft memo. above is for approval

and the draft endorsement on P2C.F. is for-
signature.

Ern
7/10/47 2.0. (10.4)

20/7/47



REVENUE DEPARTMENT

From

K.N. [illegible] Iyengar, Esq., I.C.S.,
Collector--[illegible]

To

The Secretary to Government,
Home Department--[illegible].

Ref.C.No. 1057/47-F.1. Dated 28-10-1947.

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Sir,

CRIMINAL--Revision petition--Bellary District--C.A.No. 32/47 on the file of S.J. Bellary--copies of judgment--submitted.
Ref: Government Memorandum No. 71502-F/47-2 Home Department dated 20-10-47.

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I enclose herein two certified copies of the judgment and Calender in C.A. 32/47 on the file of Seesions Judge, Bellary.

Sd/ G. Pitchi Reddy
For Dist. [illegible]
28/x/47

[illegible]

FOR DISTRICT MAGISTRATE.

V.L.Ethiraj Esq., C.I.E.,
Bar-at-Law.,
Public Prosecutor, Madras.

To
The Secretary to Government,
Home Department, Madras.

Opn.No.110/47, dated 4th Novr.1947.

Sir,

Sub: Appeal against acquittal - C.A.32/47, Sessions Judge, Bellary - C.C.49/47, A.F.C.M., Bellary - Forwarding opinion.

With reference to Endorsement No.71502 F/47-1, Home, dated 20-10-47, I have the honour to forward herewith my opinion in the above matter.

2. The papers received for reference are returned herewith.

I have the honour to be,
Sir,
Your most obedient servant,

V. L. Ethiraj
Public Prosecutor.

Opinion.

The Sessions Judge has acquitted the accused who were convicted by the Addl. Ist Class Magistrate, Bellary for the offence of transporting Korra without a permit punishable under Sec.7 of the Essential Supplie

(Temporary Powers) Act 1946 on the ground that the notification or the order contravened has not been proved to have been issued or published. The learned Judge has failed to note that the notification in question was published in the Gazette and there is no special mode of publication prescribed in the Essential Supplies (Temporary Powers) Act 1946. The lower appellate court ought to have taken judicial notice of the publication. I am of opinion that an appeal against acquittal is likely to be successful.

P. L. Ethuray

Public Prosecutor.

R/

(4-11-4)

19/14/11 716

13.

C. No 7150 R F/47

[illegible] No. 3748 Home dt 4-10-47] — PS c/o (5/1)

Home dept.

G.O. Ms. No. 4182 d 13/11/47

Criminal appeal - Appeal against acquittal - Bellary dt - Sessions Judge, Bellary. Crl A. No. 328 of 1947 - Application - Sanctioned.

Read:-

From the D.M., Bellary No. C. 1957/47 Mag. d 8-10-47.

P.P. 12 C F. From the P.P., Madras Cpn. No. 110/47 d 4-11-47.

ORDER:-

Under section 417 of the Code of Criminal Procedure, 1898, the Public Prosecutor, Madras is requested to present an appeal to the High Court against the acquittal by the Sessions Judge, Bellary of the appellant in C.A. No. 328/1947 on his file

12 C F.

Approved 8/11

To Pt:

The Public Prosecutor, Madras

Copy with PP 12 C.F. and prc. file and records dtd 8/11/47 (10.11.47)

The D.M., Bellary.

(J)

10/11/47 12/11

Note: P.T.O.

Note:- The draft order on points follows the ~~Proceedings~~ opinion of the P.P., Madras at pp11-12 of F.

8/11/47-10 4 47

Dec